

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KENNETH WINNINGHAM §
v. § CIVIL ACTION NO. 6:08cv54
UNITED STATES OF AMERICA §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON THE GOVERNMENT'S MOTION TO DISMISS IN PART

The Movant Kenneth Winningham filed this motion to vacate or correct his sentence pursuant to 28 U.S.C. §2255. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Government has been ordered to answer and has filed a motion to dismiss in part. Winningham has filed a response to this motion. On August 13, 2009, the Magistrate Judge issued a Report recommending that the motion to dismiss in part be granted. Copies of this Report were sent to the parties, return receipt requested, but no objections have been received; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court.

Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Government's motion to dismiss in part (docket no. 10) is hereby GRANTED. All of the Movant's grounds for relief except for his claim that counsel failed to file an appeal when requested are hereby DISMISSED with prejudice, with such dismissal having no effect upon the excepted claim.

So ORDERED and SIGNED this 23rd day of September, 2009.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**